

2009

Ellis v. Workforce Appeals Board of the Utah Department of Workforce Services : Brief of Respondent

Utah Court of Appeals

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Steven C. Ellis; Petitioner, Pro Se.

Goeffrey Landward; Attorney for Respondent Workforce Appeals Board of the Utah Department of Workforce Services.

Recommended Citation

Brief of Respondent, *Ellis v. Workforce Appeals Board of the Utah Department of Workforce Services*, No. 20090188 (Utah Court of Appeals, 2009).

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IN THE UTAH COURT OF APPEALS

STEVEN C. ELLIS,

Petitioner,

Case No. 20090188-CA

v.

WORKFORCE APPEALS BOARD
OF THE UTAH DEPARTMENT OF
WORKFORCE SERVICES,

Priority No. 7

Respondent.

BRIEF OF RESPONDENT

Petition for Review of a Decision of the
Workforce Appeals Board of the
Department of Workforce Services,
State of Utah

STEVEN C. ELLIS
3529 E. BROADWAY APT 9
LONG BEACH, CA 90803

GEOFFREY LANDWARD #9847
140 EAST 300 SOUTH
PO BOX 45244
SALT LAKE CITY, UT 84145-0244

Petitioner, Pro Se

Attorney for Respondent
Workforce Appeals Board of the
Utah Department of Workforce
Services

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JURISDICTION OF THE COURT OF APPEALS

This Court has jurisdiction of this Petition for Review pursuant to Article 8, §3 of the Utah Constitution; Utah Code Ann., §§35A-4-508(8)(a), 78A-4-103(2)(a), 63G-4-403; and Rule 14 of the Rules of Appellate Procedure.

ISSUES PRESENTED FOR REVIEW

Did the Workforce Appeals Board reasonably conclude the claimant did not have good cause for filing his appeal beyond the time allowed?

STANDARD OF REVIEW

The only issue properly before this Court is whether the claimant had good cause for filing his appeal beyond the deadline. This Court affirms the factual findings underlying the Board's determination of good cause only "if they are supported by substantial evidence when viewed in light of the whole record before the court." *Armstrong v. Department of Employment Sec.*, 834 P.2d 562, 565 (Utah Ct. App. 1992) (citations and internal quotations omitted). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* (citations and internal quotations omitted). The decision as to whether good cause exists is a mixed question of law and fact and should be affirmed if it is reasonable. *Id.*

STATUTES AND REGULATORY PROVISIONS AT ISSUE

The statutes and rules which are determinative in this matter are set forth verbatim in Addendum A, and include the following:

§35A-4-405(1), Utah Code Annotated (2008)
§35A-4-405(5), Utah Code Annotated (2008)
§35A-4-406(2), Utah Code Annotated (2008)
§35A-4-406(3), Utah Code Annotated (2008)
§35A-4-508(8)(a), Utah Code Annotated (2008)
§63G-4-403, Utah Code Annotated (2008)
§78A-4-103(2)(a), Utah Code Annotated (2008)
R994-508-102, Utah Administrative Code (2009)
R994-508-103, Utah Administrative Code (2009)
R994-508-104, Utah Administrative Code (2009)

STATEMENT OF THE CASE

A. Nature of the Case, Course of Proceedings, and Disposition Below.

Steven Ellis ("the claimant") is petitioning for review of two decisions of the Workforce Appeals Board ("Board") regarding his eligibility for unemployment insurance compensation.¹

On August 29, 2008, the Department of Workforce Services issued a decision finding the claimant had received benefits to which he was not entitled because he was working and had earnings while receiving unemployment insurance benefits and knowingly misreported

¹Although not entirely clear from the claimant's pleadings, it appears that he is appealing two separate decisions that the Board issued simultaneously. Both of the Board's decisions were based on identical issues, however, and can be addressed with the same facts and reasoning.

or failed to report those earnings. Furthermore, the Department found the claimant failed to report that he had voluntarily quit his job. Accordingly, the Department assessed a \$3,019 fraud overpayment and penalty and a \$124 fault overpayment, pursuant to §§ 35A-4-405(5) and 35A-4-406(4) of the Utah Employment Security Act.

In a separate decision issued on August 29, 2008, the Department determined the claimant did not establish good cause for voluntarily quitting from Valet Parking Services Inc., rendering him ineligible for benefits under the Utah Employment Security Act § 35A-4-405(1). (All Utah Code provisions are found sequentially at Addendum A, Department decisions at Addendum B.)

The claimant appealed the Department's decisions on October 23, 2008. An Administrative Law Judge ("ALJ") held an evidentiary hearing on November 19, 2008, at which the claimant, the employer, and the Department participated. The ALJ issued a decision on November 20, 2008, finding she lacked jurisdiction because the claimant had filed his appeal of the Department's decisions beyond the required deadline and without good cause. (See Addendum C). The claimant appealed the ALJ's decision to the Workforce Appeals Board. The Board unanimously upheld the ALJ's decision, finding the claimant had filed his appeal late without good cause and that there was no mistake as to fact that would justify the Board taking jurisdiction. (See Addendum D). The claimant filed this Petition seeking review of the Board's decision.

B. Statement of the Facts.

The Workforce Appeals Board supplements and corrects the claimant's Statement of the Facts as follows:

The claimant worked as a valet attendant for Valet Parking Services from March 2008 to July 12, 2008. (Record 043:36-45). The claimant voluntarily left his employment to go to school in California. (R. 045:12). The claimant had filed for unemployment benefits effective March 30, 2008. (R. 004-007). On August 28, 2008, the Department issued two decisions regarding the Claimant's unemployment insurance benefits. (R. 001;013). The first decision found the claimant had been employed and receiving work and earnings while receiving unemployment insurance benefits and that the claimant failed to report a separation from employment. That decision assessed a \$3,019 fraud overpayment and penalty and a \$124 fault overpayment. The second decision found the claimant had voluntarily quit his employment without good cause and therefore rendered him ineligible for benefits.

Both decisions unambiguously instructed the claimant that any appeal of these decisions must be received or postmarked no later than September 15, 2008. (R. 001;013). The claimant did not file his appeal until October 23, 2008. (R. 002). The claimant's appeal was 38 days late because he initially thought he would repay the \$124 fault overpayment rather than file an appeal because the amount was so small. (R. 041:8-10, 34-39). It was not until later that he discovered he owed significantly more than the \$124 fault overpayment

and therefore wanted to appeal. The claimant's oversight occurred because he failed to read the decision letter closely. (R. 042:21-24).

SUMMARY OF ARGUMENTS

The claimant's failure to read the Department's decisions regarding his benefits carefully did not constitute good cause for filing his appeal beyond the time allowed. The claimant's late appeal and lack of good cause deprived the Administrative Law Judge of jurisdiction over the case.

ARGUMENT

I. THE BOARD REASONABLY CONCLUDED THE CLAIMANT DID NOT HAVE GOOD CAUSE FOR HIS LATE APPEAL BECAUSE HIS FAILURE TO CAREFULLY READ THE DEPARTMENT'S DECISION WAS NEITHER A COMPELLING NOR REASONABLE CIRCUMSTANCE.

The only issue properly before this Court is whether the claimant filed his appeal beyond the time allowed without good cause. Although the claimant's petition for review does not address the issue of timeliness, the Board's decision only addressed the timeliness of the claimant's appeal. Therefore, this Court need only determine if the Board's conclusion that the claimant did not have good cause for his late appeal was reasonable.

A claimant who has been denied unemployment benefits "may file an appeal from the determination with the Division of Adjudication within ten days after the date of mailing of the notice of determination." Utah Code Ann. § 35A-4-406(3)(a) (2008). If the Department

mails its decision, five days are added to the time prescribed by the Act for filing the appeal. Utah Admin. Code R994-508-102(1) (2008). Therefore, the amount of time permitted for filing an appeal from any decision that the Department mails is 15 calendar days unless otherwise specified on the decision or by the Act. *Id.*

Claimants who do not file an appeal within the time permitted have the chance to show good cause for filing late. Claimants must show good cause under one of the following three circumstances:

- (a) the appellant received the decision after the expiration of the time limit for filing the appeal, the appeal was filed with ten days actual receipt of the decision and the delay was not the result of willful neglect;
- (b) the delay in filing the appeal was due to circumstances beyond the appellant's control; or
- (c) the appellant delayed filing the appeal for circumstances which were compelling and reasonable.

Utah Admin. Code R994-508-104 (2008).

If the claimant does not show good cause for filing late, the ALJ does not have jurisdiction to hear the appeal. Utah Admin. Code R994-508-103 (2008).

In the present petition, the claimant does not dispute that he filed his appeal late – his appeal was 38 days beyond the time allowed. The only question remaining is whether the claimant had good cause for filing beyond the time allowed.

Of the three circumstances in which good cause can be shown, the first two do not apply to the claimant's explanation. The claimant received the Department's decisions well

before the appeal deadline, giving him ample opportunity to file within the stated time limit. Moreover, the claimant does not cite any circumstances beyond his control that prevented him from filing his appeal within the time allowed.

Consequently, the claimant must show he was delayed in filing his appeal for circumstances that were compelling and reasonable; the claimant was unable to demonstrate either. Although the claimant received and read the Department's decisions, he initially decided to not file an appeal because the amount he thought he was required to pay was so small he would just pay it and be done. Unfortunately, the claimant had not read the Department's decisions carefully enough to realize the overpayment amounts were significantly higher. When the claimant learned that he owed over \$3,000, he decided to file his appeal but well past the deadline.


The claimant's failure to carefully read the Department's decisions does not constitute a compelling reason for failing to file his appeal on time. This Court has consistently and strictly enforced the filing deadline. For instance, the claimant in *Armstrong v. Department of Employment Security*, 834 P.2d 562 (Utah App. 1992), had filed her appeal only one day late. The claimant argued she had good cause for filing late because she confused "working days" with "calendar days." This Court rejected that argument, finding her circumstances were neither compelling nor reasonable. *See also Autoliv ASP v. Workforce Appeals Board*, 2000 UT App. 223, 8 P.3d 1033.

This Court should likewise find the Board acted reasonably in concluding the claimant's failure to carefully read the Department's decision did not constitute good cause for filing a late appeal.

CONCLUSION

The claimant has raised no competent argument to show the Board's decision is either unreasonable or irrational. The Board's determinations of fact are well supported by the evidence and testimony in the record. The claimant failed to establish good cause for his untimely appeal to the ALJ and the decision of the Board should be upheld.

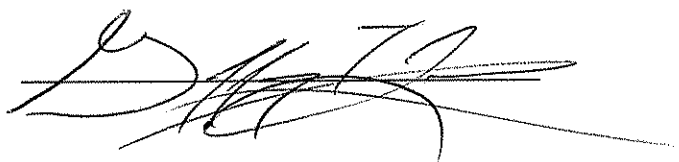
Respectfully submitted this 6 day of July, 2009.


GEOFFREY T. LANDWARD
Attorney for Respondent
Workforce Appeals Board
Department of Workforce Services

CERTIFICATE OF MAILING

I CERTIFY that I mailed two copies of the foregoing Respondent's Brief, postage prepaid, to the following this 6 day of July, 2009:

STEVEN C ELLIS
424 W 17TH ST
LONG BEACH CA 90813

A handwritten signature in black ink, appearing to read "S. C. Ellis", with a long horizontal flourish extending to the right.

35A-4-405. Ineligibility for benefits.

Except as otherwise provided in Subsection (5), an individual is ineligible for benefits or for purposes of establishing a waiting period:

(1) (a) For the week in which the claimant left work voluntarily without good cause, if so found by the division, and for each week thereafter until the claimant has performed services in bona fide, covered employment and earned wages for those services equal to at least six times the claimant's weekly benefit amount.

(b) A claimant may not be denied eligibility for benefits if the claimant leaves work under circumstances where it would be contrary to equity and good conscience to impose a disqualification.

(c) Using available information from employers and the claimant, the division shall consider for the purposes of this chapter the reasonableness of the claimant's actions, and the extent to which the actions evidence a genuine continuing attachment to the labor market in reaching a determination of whether the ineligibility of a claimant is contrary to equity and good conscience.

(d) Notwithstanding any other subsection of this section, a claimant who has left work voluntarily to accompany, follow, or join the claimant's spouse to or in a new locality does so without good cause for purposes of Subsection (1).

35A-4-405. Ineligibility for benefits.

Except as otherwise provided in Subsection (5), an individual is ineligible for benefits or for purposes of establishing a waiting period:

(5) (a) For each week with respect to which the claimant willfully made a false statement or representation or knowingly failed to report a material fact to obtain any benefit under the provisions of this chapter, and an additional 13 weeks for the first week the statement or representation was made or fact withheld and six weeks for each week thereafter; the additional weeks not to exceed 49 weeks.

(b) The additional period shall commence on the Sunday following the issuance of a determination finding the claimant in violation of this Subsection (5).

(c) (i) Each claimant found in violation of this Subsection (5) shall repay to the division the overpayment and, as a civil penalty, an amount equal to the overpayment.

(ii) The overpayment is the amount of benefits the claimant received by direct reason of fraud.

(iii) The penalty amount shall be regarded as any other penalty under this chapter.

(iv) These amounts shall be collectible by civil action or warrant in the manner provided in Subsections 35A-4-305(3) and (5).

(d) A claimant is ineligible for future benefits or waiting week credit, and any wage credits earned by the claimant shall be unavailable for purposes of paying benefits, if any amount owed under this Subsection (5) remains unpaid.

(e) Determinations under this Subsection (5) shall be appealable in the manner provided by this chapter for appeals from other benefit determinations.

(f) If the fraud determination is based solely on unreported or underreported work or earnings, or both, and the claimant would have been eligible for benefits if the work or earnings, or both, had been correctly reported, the individual does not lose eligibility for that week because of the misreporting but is liable for the overpayment and subject to the penalties in Subsection (5)(c) and the disqualification periods for future weeks in Subsection (5)(a).

35A-4-406. Claims for benefits -- Continuing jurisdiction -- Appeal -- Notice of decision -- Repayment of benefits fraudulently received.

(2)(a) Jurisdiction over benefits shall be continuous.

(b) Upon its own initiative or upon application of any party affected, the division may on the basis of change in conditions or because of a mistake as to facts, review a decision allowing or disallowing in whole or in part a claim for benefits.

(c) The review shall be conducted in accordance with rules adopted by the department and may result in a new decision that may award, terminate, continue, increase, or decrease benefits, or may result in a referral of the claim to an appeal tribunal.

(d) Notice of any redetermination shall be promptly given to the party applying for redetermination and to other parties entitled to notice of the original determination, in the manner prescribed in this section with respect to notice of an original determination.

(e) The new order shall be subject to review and appeal as provided in this section.

(f) A review may not be made after one year from the date of the original determination, except in cases of fraud or claimant fault as provided in Subsection (4).

35A-4-406. Claims for benefits -- Continuing jurisdiction -- Appeal -- Notice of decision -- Repayment of benefits fraudulently received.

(3)(a) The claimant or any other party entitled to notice of a determination as provided by department rule may file an appeal from the determination with the Division of Adjudication within ten days after the date of mailing of the notice of determination or redetermination to the party's last-known address or, if the notice is not mailed, within ten days after the date of delivery of the notice.

(b) Unless the appeal or referral is withdrawn with permission of the administrative law judge, after affording the parties reasonable opportunity for a fair hearing, the administrative law judge shall make findings and conclusions and on that basis affirm, modify, or reverse the determination or redetermination.

(c) The administrative law judge shall first give notice of the pendency of an appeal to the division, which may then be a party to the proceedings. The administrative law judge shall receive into the record of the appeal any documents or other records provided by the division, and may obtain or request any additional documents or records held by the division or any of the parties that the administrative law judge considers relevant to the proper determination of the appeal.

(d) The parties shall be promptly notified of the administrative law judge's decision and shall be furnished with a copy of the decision and the findings and conclusions in support of the decision.

(e) The decision is considered to be final unless, within 30 days after the date of mailing of notice and a copy of the decision to the party's last-known address, or in the absence of mailed notice, within 30 days after the delivery of the notice, further appeal is initiated under Section 35A-4-508 and Chapter 1, Part 3, Adjudicative Proceedings.

35A-4-508. Review of decision or determination by division -- Administrative law judge -- Division of adjudication -- Workforce Appeals Board -- Judicial review by Court of Appeals -- Exclusive procedure.

(8)(a) Within 30 days after the decision of the Workforce Appeals Board is issued, any aggrieved party may secure judicial review by commencing an action in the court of appeals against the Workforce Appeals Board for the review of its decision, in which action any other party to the proceeding before the Workforce Appeals Board shall be made a defendant.

63G-4-403. Judicial review -- Formal adjudicative proceedings.

(1) As provided by statute, the Supreme Court or the Court of Appeals has jurisdiction to review all final agency action resulting from formal adjudicative proceedings.

(2) (a) To seek judicial review of final agency action resulting from formal adjudicative proceedings, the petitioner shall file a petition for review of agency action with the appropriate appellate court in the form required by the appellate rules of the appropriate appellate court.

(b) The appellate rules of the appropriate appellate court shall govern all additional filings and proceedings in the appellate court.

(3) The contents, transmittal, and filing of the agency's record for judicial review of formal adjudicative proceedings are governed by the Utah Rules of Appellate Procedure, except that:

(a) all parties to the review proceedings may stipulate to shorten, summarize, or organize the record;

(b) the appellate court may tax the cost of preparing transcripts and copies for the record:

(i) against a party who unreasonably refuses to stipulate to shorten, summarize, or organize the record; or

(ii) according to any other provision of law.

(4) The appellate court shall grant relief only if, on the basis of the agency's record, it determines that a person seeking judicial review has been substantially prejudiced by any of the following:

(a) the agency action, or the statute or rule on which the agency action is based, is unconstitutional on its face or as applied;

(b) the agency has acted beyond the jurisdiction conferred by any statute;

(c) the agency has not decided all of the issues requiring resolution;

(d) the agency has erroneously interpreted or applied the law;

(e) the agency has engaged in an unlawful procedure or decision-making process, or has failed to follow prescribed procedure;

(f) the persons taking the agency action were illegally constituted as a decision-making body or were subject to disqualification;

(g) the agency action is based upon a determination of fact, made or implied by the agency, that is not supported by substantial evidence when viewed in light of the whole record before the court;

(h) the agency action is:

(i) an abuse of the discretion delegated to the agency by statute;

(ii) contrary to a rule of the agency;

(iii) contrary to the agency's prior practice, unless the agency justifies the inconsistency by giving facts and reasons that demonstrate a fair and rational basis for the inconsistency; or

(iv) otherwise arbitrary or capricious.

78A-4-103. Court of Appeals jurisdiction.

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of informal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, School and Institutional Trust Lands Board of Trustees, Division of Forestry, Fire and State Lands actions reviewed by the executive director of the Department of Natural Resources, Board of Oil, Gas, and Mining, and the state engineer;

R994-508-102. Time Limits for Filing an Appeal from an Initial Department Determination.

(1) If the initial Department determination was delivered to the party, the time permitted for an appeal is ten calendar days. "Delivered to the party" means personally handed, faxed, or sent electronically to the party. If the determination was sent through the U.S. Mail, an additional five calendar days will be added to the time allowed for an appeal from the initial Department determination. Therefore, the amount of time permitted for filing an appeal from any initial Department determination sent through the U.S. Mail is fifteen calendar days unless otherwise specified on the decision.

(2) In computing the period of time allowed for filing an appeal, the date as it appears in the determination is not included. The last day of the appeal period is included in the computation unless it is a Saturday, Sunday, or legal holiday when Department offices are closed. If the last day permitted for filing an appeal falls on a Saturday, Sunday, or legal holiday, the time permitted for filing a timely appeal will be extended to the next day when Department offices are open.

(3) An appeal sent through the U.S. Mail is considered filed on the date shown by the postmark. If the postmark date cannot be established because it is illegible, erroneous, or omitted, the appeal will be considered filed on the date it was mailed if the sender can establish that date by competent evidence and can show that it was mailed prior to the date of actual receipt. If the date of mailing cannot be established by competent evidence, the appeal will be considered filed on the date it is actually received by the Appeals Unit as shown by the Appeals Unit's date stamp on the document or other credible evidence such as a written notation of the date of receipt. "Mailed" in this subsection means taken to the post office or placed in a receptacle which is designated for pick up by an employee who has the responsibility of delivering it to the post office.

R994-508-103. Untimely Appeal.

If it appears that an appeal was not filed in a timely manner, the appellant will be notified and given an opportunity to show that the appeal was timely or that it was delayed for good cause. If it is found that the appeal was not timely and the delay was without good cause, the ALJ or the Board will not have jurisdiction to consider the merits unless jurisdiction is established in accordance with provisions of Subsection 35A-4-406(2). Any decision with regard to jurisdictional issues will be issued in writing and delivered or mailed to all interested parties with a clear statement of the right of further appeal or judicial review.

R994-508-104. Good Cause for Not Filing Within Time Limitations.

A late appeal may be considered on its merits if it is determined that the appeal was delayed for good cause. Good cause is limited to circumstances where it is shown that:

(1) the appellant received the decision after the expiration of the time limit for filing the appeal, the appeal was filed within ten days of actual receipt of the decision and the delay was not the result of willful neglect;

(2) the delay in filing the appeal was due to circumstances beyond the appellant's control; or

(3) the appellant delayed filing the appeal for circumstances which were compelling and reasonable.

UTAH DEPARTMENT OF WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
DECISION OF ELIGIBILITY FOR
UNEMPLOYMENT INSURANCE BENEFITS



DATE MAILED: 8/29/08

VQMP

STEVEN C ELLIS
1917 HUNTINGTON ST # 1
HUNTINGTON BEACH CA 92648-3135

SSN: XXX-XX-X793

EMPLOYER: VALET PARKING SERVICES IN

Notice: This decision is made on your claim for benefits:

You voluntarily left your job to leave the area for personal reasons.

You did not establish good cause for leaving by showing that staying in this job would cause sufficient hardship to make it necessary for you to quit before finding another job or that you had no reasonable alternative to quitting.

Benefits cannot be allowed under the equity and good conscience provision because you have not shown that your reasons for leaving were sufficiently mitigating and/or you have not demonstrated a continuing attachment to the labor force.

Benefits are denied under Section 35A-4-405(1) of the Utah Employment Security Act beginning July 6, 2008 and ending when you have earned wages in bona fide covered employment equal to at least six times your weekly benefit amount and you are otherwise eligible. To reopen your claim, you can file online at jobs.utah.gov or you can call the Claim Center. This reopening will be effective as of the week you reopen your claim. You will be notified separately of any other issues on your claim.

RIGHT TO APPEAL: If you believe this decision is incorrect, appeal by mail to: Utah Department of Workforce Services, Appeals Section, PO Box 45244, Salt Lake City, UT 84145-0244, or Fax (801) 526-9242, or online at www.jobs.utah.gov. Your appeal must be in writing and must be received or postmarked on or before September 15, 2008. An appeal received or postmarked after September 15, 2008 may be considered if good cause for the late filing can be established. Your appeal must be signed by you or your legal representative. **MAKE SURE YOUR NAME IS WRITTEN LEGIBLY AND THAT YOU INCLUDE YOUR SOCIAL SECURITY NUMBER AND CURRENT ADDRESS.** Also, please state the reason for your appeal. A copy of your appeal will be sent to any other interested parties. It is very important for you to continue to file your weekly claims while the appeal process is pending. You will not be paid for any weeks not filed timely unless you can show good cause for late filing.

UTAH CLAIMS CENTER PHONE NUMBERS: S.L.: 526-4400, Ogden: 612-0877, Provo: 375-4067, Out of Area: (888) 848-0688.

REPR. J Fruin

EMP #: 5863

DO NOT WRITE BELOW THIS LINE



5047962

001

Exhibit 1

UTAH DEPARTMENT OF WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
DECISION OF ELIGIBILITY FOR
UNEMPLOYMENT INSURANCE BENEFITS

ADDENDUM B



DATE MAILED: 8/29/08

SSN: XXX-XX-X793

STEVEN C ELLIS
1917 HUNTINGTON ST # 1
HUNTINGTON BEACH CA 92648-3135

FRWE

After a thorough review of the available information presented to the Department, it is concluded that you were working and had earnings while receiving unemployment insurance benefits and knowingly misreported or failed to report these earnings.

You will receive a separate notice indicating any overpayments and penalties associated with this disqualification.

You are disqualified from receiving unemployment benefits or waiting week credit for 43 weeks effective August 31, 2008 through June 27, 2009 and until the overpayment and penalty amounts are repaid in full as provided under Section 35A-4-405(5) of the Act. (See reverse) The disqualification time period is determined by the number of weeks in which the misrepresentation(s) or omission(s) occurred.

RIGHT TO APPEAL: If you believe this decision is incorrect, appeal by mail to: Utah Department of Workforce Services, Appeals Section, PO Box 45244, Salt Lake City, UT 84145-0244, or Fax (801) 526-9242, or online at www.jobs.utah.gov. Your appeal must be in writing and must be received or postmarked on or before September 15, 2008. An appeal received or postmarked after September 15, 2008 may be considered if good cause for the late filing can be established. Your appeal must be signed by you or your legal representative. **MAKE SURE YOUR NAME IS WRITTEN LEGIBLY AND THAT YOU INCLUDE YOUR SOCIAL SECURITY NUMBER AND CURRENT ADDRESS.** Also, please state the reason for your appeal. A copy of your appeal will be sent to any other interested parties. It is very important for you to continue to file your weekly claims while the appeal process is pending. You will not be paid for any weeks not filed timely unless you can show good cause for late filing. See attached information for a more detailed explanation of the law provisions.

UTAH CLAIMS CENTER PHONE NUMBERS: S.L.: 526-4400, Ogden: 612-0877, Provo: 375-4067, Out of Area: (888) 848-0688.

REPR. J Fruin

EMP #: 5863

DO NOT WRITE BELOW THIS LINE



5047729

Exhibit 1

013

UTAH DEPARTMENT OF WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
UNEMPLOYMENT BENEFIT OVERPAYMENT NOTICE



DATE MAILED: 8/29/08

SSN: XXX-XX-X793

STEVEN C ELLIS
1917 HUNTINGTON ST # 1
HUNTINGTON BEACH CA 92648-3135

FTFR

NOTICE OF UNEMPLOYMENT BENEFIT OVERPAYMENT

You have been paid unemployment benefits in the amount of \$124.00 to which you are not entitled. You are responsible for this overpayment and you must repay it under the provisions of Section 35A-4-406(4) of the Utah Employment Security Act. If you are now eligible, your benefit payments will be reduced by 100% each week until this amount has been repaid unless you receive benefits from a federal program then it will be 50%. Otherwise, you must send your repayment to: The Unemployment Compensation Fund; %Benefit Collections; P.O. Box 45288; Salt Lake City UT 84145-0288. Record your Social Security number on your check or money order. Do not send cash. You can arrange to pay by MasterCard or VISA credit or debit card.

You can request an installment agreement by contacting the Collections office within ten (10) days of this notice. In Salt Lake County call 526-9370. Outside of Salt Lake County, but within Utah, call (800) 222-2857, Ext. 9370. Outside of Utah call (801) 526-9370. If the installment agreement is approved, no legal collection action will be taken as long as you remain current in your monthly payments. If you do not repay when due, recovery of this overpayment will be enforced by all means such as Sheriff's sale, garnishment of your wages or bank account, or recovery of your state tax refund.

You are considered to have knowingly withheld material information or failed to report information in order to receive unemployment benefits to which you were not entitled. This has created an overpayment of \$1548.00 and a penalty of \$ 1548.00 that must be repaid before you are eligible for any future benefits or waiting week credit as provided under Section 35A-4-405(5) of the Utah Employment Security Act. The total overpayment and penalty amount is due and payable immediately to: The Unemployment Compensation Fund; %Benefit Collections; P.O. Box 45288; Salt Lake City UT 84145-0288. Record your Social Security number on your check or money order. Do not send cash.

Any payments currently due will be reclaimed to reduce the total overpayment. Recovery of overpayments will be enforced by all lawful means such as sheriff's sale, garnishment of wages or bank account, recovery of state tax refunds, etc. If you are unable to immediately pay the total amount, contact the Collections Department and make arrangements for possible repayment on an installment basis. In Salt Lake County call 526-9370. Within Utah, but outside Salt Lake County, call (800) 222-2857, Ext. 9370. Outside of Utah call (801) 526-9370. You can also arrange to pay by MasterCard or VISA credit or debit card.

The overpayment(s) above may not include credits or offsets applied to repay this overpayment nor does it include any previous overpayment balance you may have.

DO NOT WRITE BELOW THIS LINE



5048776

Exhibit 2

014

UTAH DEPARTMENT OF WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
UNEMPLOYMENT BENEFIT OVERPAYMENT NOTICE



RIGHT TO APPEAL: If you believe this decision is incorrect, appeal by mail to: Utah Department of Workforce Services, Appeals Section, PO Box 45244, Salt Lake City, UT 84145-0244, or Fax (801) 526-9242, or online at www.jobs.utah.gov. Your appeal must be in writing and must be received or postmarked on or before September 15, 2008. An appeal received or postmarked after September 15, 2008 may be considered if good cause for the late filing can be established. Your appeal must be signed by you or your legal representative. **MAKE SURE YOUR NAME IS WRITTEN LEGIBLY AND THAT YOU INCLUDE YOUR SOCIAL SECURITY NUMBER AND CURRENT ADDRESS.** Also, please state the reason for your appeal. A copy of your appeal will be sent to any other interested parties. It is very important for you to continue to file your weekly claims while the appeal process is pending. You will not be paid for any weeks not filed timely unless you can show good cause for late filing.

UTAH CLAIMS CENTER PHONE NUMBERS: S.L.: 526-4400, Ogden: 612-0877, Provo: 375-4067, Out of Area: (888) 848-0688.

REPR. J Fruin

EMP.#: 5863

DO NOT WRITE BELOW THIS LINE



5048776

Exhibit 3

015

Form APDEC
05

DEPARTMENT OF WORKFORCE SERVICES
APPEALS UNIT

Decision of Administrative Law Judge

STEVEN C ELLIS
3529 E BROADWAY APT 9
LONG BEACH CA 90803-6064

S.S.A. NO: XXX-XX-4793

CASE NO: 08-A-07982

APPEAL DECISION: Untimely appeal - Benefits denied.
\$3,143 fraud overpayment and penalty affirmed.

CASE HISTORY:

Date of Initial Agency Determination:	August 29, 2008
Date of Appeal filed by Claimant:	October 23, 2008
Appearances:	Claimant/Department
Issues to be Decided:	35A-4-406(2) - Continuing Jurisdiction
	35A-4-406(3) - Timeliness of Appeal
	35A-4-405(5) - Fraud
	35A-4-406(4) - Fault Overpayment

The original Department decisions denied unemployment insurance benefits for the weeks ending May 3, 2008, through August 16, 2008, on the grounds the Claimant failed to accurately report his work and earnings as well as a disqualifying separation and, therefore, knowingly withheld material information in order to receive benefits to which he was not entitled. The Claimant was further disqualified for 43 weeks, beginning August 31, 2008, and ending June 27, 2008. This decision also created an overpayment in the amount of \$1,548, representing the amount received as a direct result of fraud, and a civil penalty of \$1,548, as well as an additional fault overpayment of \$124, resulting in a total overpayment of \$3,143.

APPEAL RIGHTS: The following decision will become final unless, within **30 days** from **November 20, 2008**, further written appeal is received by the Workforce Appeals Board (PO Box 45244, Salt Lake City, UT 84145-0244; FAX 801-526-9244; or online at <http://www.jobs.utah.gov/appeals>) setting forth the grounds upon which the appeal is made.

FINDINGS OF FACT:

The Department's decision was issued on August 29, 2008. It was mailed to the Claimant's full and correct address of record. The decision contained the following:

RIGHT TO APPEAL: If you believe this decision is incorrect, appeal by mail to: Utah Department of Workforce Services, Appeals Section, PO BOX 45244, Salt Lake City, UT 84145-0244, or Fax (801) 526-9242, or on-line at www.jobs.utah.gov. Your appeal must be in writing and must be received or postmarked on or before September 15, 2008. An appeal received or postmarked after September 15, 2008, may be considered if good cause for the late filing can be established. Your appeal must be signed by you or your legal representative. **MAKE SURE YOUR NAME IS WRITTEN LEGIBLY AND THAT YOU INCLUDE YOUR SOCIAL SECURITY NUMBER AND CURRENT ADDRESS.** Also, please state the reason for your appeal. A copy of your appeal will be sent to any other interested parties. It is very important for you to continue to file your weekly claims while the appeal process is pending. You will not be paid for any weeks not filed timely unless you can show good cause for late filing. See attached information for a more detailed explanation of the law provisions.

The Claimant's appeal was submitted on October 23, 2008. The appeal was filed beyond the time limitation imposed by the statute, as it was not filed within ten days from the date the decision was issued (15 days if the decision was sent through the U. S. mail).

The Claimant received the Department decision finding he had committed fraud and assessing a disqualification period as well as a fault overpayment and fraud penalty. The Claimant did not read the decision letter concerning the overpayment and penalty carefully. He believed the only overpayment he had was \$124. He failed to read further into the body of the letter where he was informed of the \$1,548 fraud overpayment and penalty. The Claimant elected just to pay the \$124 and not file an appeal. When he discovered he actually had over \$3,000 in overpayments and penalties, he filed his appeal.

REASONING AND CONCLUSIONS OF LAW:

The Unemployment Insurance Rules pertaining to Section 35A-4-406(3) of the Utah Employment Security Act state:

R994-508-104. Good Cause for Not Filing Within Time Limitations.

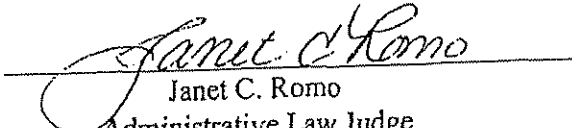
A late appeal may be considered on its merits if it is determined that the appeal was delayed for good cause. Good cause is limited to circumstances where it is shown that:

- (1) the appellant received the decision after the expiration of the time limit for filing the appeal, the appeal was filed within ten days of actual receipt of the decision and the delay was not the result of willful neglect;
- (2) the delay in filing the appeal was due to circumstances beyond the appellant's control; or
- (3) the appellant delayed filing the appeal for circumstances which were compelling and reasonable.

The Claimant has not shown he was prevented from making the appeal during the period in question. He elected not to file his appeal because he believed there was only an overpayment of \$124. He did not carefully read the decision letter which also informed him of a \$1,548 overpayment and \$1,548 penalty. Failure to read the Department's decision letter does not show good cause for failing to file the appeal on time. There is no evidence of a mistake as to the facts which would justify exercising continuing jurisdiction. Section 35A-4-406(3) of the Act is a statute of limitations governing the jurisdiction of the Appeals Tribunal. The effect and purpose of the section is to limit the Tribunal to consideration of those matters which are brought before it by timely appeals of interested parties.

DECISION AND ORDER:

The appeal was not timely within the requirements of Section 35A-4-406(3) of the Utah Employment Security Act or the Rules pertaining thereto. The Administrative Law Judge, therefore, lacks jurisdiction for further consideration of the matter and the decision appealed is still in effect.


Janet C. Romo
Administrative Law Judge
DEPARTMENT OF WORKFORCE SERVICES

Issued: November 20, 2008

JCR/tc

Form BRDEC
ISSUE 05

WORKFORCE APPEALS BOARD
Department of Workforce Services
Division of Adjudication

STEVEN C. ELLIS, CLAIMANT
S.S.A. No. XXX-XX-4793

:

:

Case No. 08-B-00728

DEPARTMENT OF WORKFORCE
SERVICES

:

DECISION OF WORKFORCE APPEALS BOARD:

The Board lacks jurisdiction to consider the merits of this case because the Claimant did not have good cause for his untimely appeal to the Administrative Law Judge.

The Department decision regarding fraud remains in effect.

HISTORY OF CASE:

In a decision dated November 20, 2008, Case No. 08-A-07982, the Administrative Law Judge held the Claimant's untimely appeal from an earlier Department decision was without good cause and she lacked jurisdiction to consider the merits of the case. The Department decision holding the Claimant knowingly withheld material information from the Department regarding his work and earnings during the weeks ending May 3, 2008, through August 16, 2008, in order to obtain benefits to which he was not entitled, remained in effect. The Department decision denying benefits for 43 additional weeks from August 31, 2008, until June 27, 2009, and requiring the Claimant to repay \$3,143 to the Utah Unemployment Compensation Fund, also remained in effect.

JURISDICTION OF WORKFORCE APPEALS BOARD:

The Workforce Appeals Board has authority to review the Administrative Law Judge's decision pursuant to §35A-4-508(4) and (5) of the Utah Employment Security Act and the Utah Administrative Code (1997) pertaining thereto.

CLAIMANT APPEAL FILED: December 19, 2008.

ISSUE BEFORE WORKFORCE APPEALS BOARD AND APPLICABLE PROVISION OF UTAH EMPLOYMENT SECURITY ACT:

Did the Claimant have good cause pursuant to Department Rule R994-508-104 for filing his appeal to the Administrative Law Judge in an untimely manner?

08-B-00728

- 2 -

XXX-XX-4793
STEVEN C. ELLIS**FACTUAL FINDINGS:**

The Workforce Appeals Board adopts in full the factual findings of the Administrative Law Judge.

REASONING AND CONCLUSIONS OF LAW:

The Department issued a decision dated August 29, 2008, finding the Claimant committed fraud in the receipt of unemployment insurance benefits to which he was not entitled, because he failed to report his separation from his employment when filing weekly claims for benefits. That decision created a fault overpayment of \$124, and a fraud overpayment and penalty totaling \$3,096. The decision had an appeal deadline of September 15, 2008. The Claimant received the decision in the mail and initially decided not to file an appeal, because he was not going to attempt to collect further unemployment insurance benefits, and believed his overpayment was only \$124. The Claimant did not carefully read the decision to realize he was also liable for a fraud overpayment and penalty totaling \$3,096. After the Claimant began receiving collection letters he filed an appeal. The Administrative Law Judge found the Claimant did not have good cause for his untimely appeal and declined to take jurisdiction to consider the merits of the case.

On appeal to the Board the Claimant only address the merits of his case and does not address the underlying issue of his late appeal. Neither the Board nor the Administrative Law Judge can consider the merits of the Claimant's case unless he can show he had good cause for his late appeal. The Claimant admitted to receiving the decisions in the mail and made a choice not to file an appeal. The Administrative Law Judge found, and the Board agrees, that the Claimant did not have good cause for his late appeal, nor were the circumstances surrounding his late appeal compelling and reasonable.

The Board affirms the decision of the Administrative Law Judge and adopts in full her reasoning and conclusions of law.

DECISION:

The Claimant's appeal to the Administrative Law Judge was untimely without good cause. The Workforce Appeals Board, therefore, lacks jurisdiction to consider the Claimant's appeal further.

The Department decision denying benefits for the weeks ending May 3, 3008, through August 16, 2008 and disqualifying the Claimant for 43 additional weeks beginning August 31, 2008, and ending June 27, 2009, under the provisions of §35A-4-405(5) of the Utah Employment Security Act, remains in effect.

The overpayment and penalty of \$3,143 established by the Department pursuant to §§35A-4-405(5) and 35A-4-406(4) of the Act, also remains in effect.

08-B-00728

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XXX-XX-4793
STEVEN C. ELLIS**APPEAL RIGHTS:**

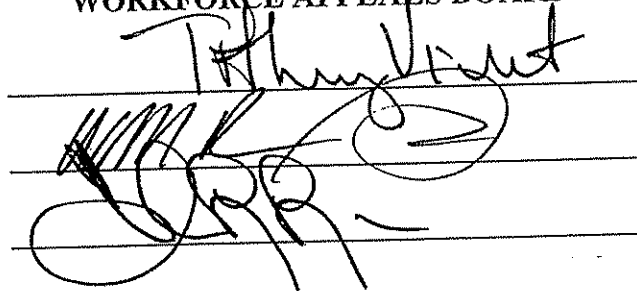
Pursuant to §63-46b-13(1)(a) of the Utah Administrative Procedures Act, you may request reconsideration of this decision within 20 days from the date this decision is issued. Your request for reconsideration must be in writing and must state the specific grounds upon which relief is requested. The request must be filed with the Workforce Appeals Board at 140 East 300 South, Salt Lake City, Utah, or may be mailed to the Workforce Appeals Board at P.O. Box 45244, Salt Lake City, Utah 84145-0244. A copy of the request for reconsideration must also be mailed to each party by the person making the request. If the Workforce Appeals Board does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied pursuant to §63-46b-13(3)(b) of the Utah Administrative Procedures Act. The filing of a request for reconsideration is not a prerequisite for seeking judicial review of this order. If a request for reconsideration is made, the Workforce Appeals Board will issue another decision. This decision will set forth the rights of further appeal to the Court of Appeals and time limitation for such an appeal.

You may appeal this decision to the Utah Court of Appeals. Your appeal must be submitted in writing within 30 days of the date this decision is issued. The Court of Appeals is located on the fifth floor of the Scott M. Matheson Courthouse, 450 South State Street, P. O. Box 140230, Salt Lake City, Utah 84114-0230. The appeal must show the Workforce Appeals Board, Department of Workforce Services and any other party to the proceeding as Respondents. To file an appeal with the Court of Appeals, you must submit to the Clerk of the Court a Petition for Writ of Review setting forth the reasons for appeal, pursuant to §35A-4-508(8) of the Utah Employment Security Act; §63-46b-16 of the Utah Administrative Procedures Act; and Rule 14 of the Utah Rules of Appellate Procedure, followed by a Docketing Statement and a Legal Brief as required by Rules 9 and 24-27, Utah Rules of Appellate Procedure.

WORKFORCE APPEALS BOARD

Date Issued: February 2, 2009

TV/TL/WS/gl/mld



077

08-B-00728

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XXX-XX-4793
STEVEN C. ELLIS

MAILING CERTIFICATE

I hereby certify that I caused a true and correct copy of the foregoing DECISION to be served upon each of the following on this 2nd day of February, 2009, by mailing the same, postage prepaid, United States mail to:

STEVEN C ELLIS
3529 E BROADWAY APT 9
LONG BEACH CA 90803-6064

A handwritten signature in cursive script, reading "Michelle Sefrigo", is written over a horizontal line.

UTAH DEPARTMENT OF WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
DECISION OF ELIGIBILITY FOR
UNEMPLOYMENT INSURANCE BENEFITS



DATE MAILED: 8/29/08

VQMP

STEVEN C ELLIS
1917 HUNTINGTON ST # 1
HUNTINGTON BEACH CA 92648-3135

SSN: XXX-XX-X793

EMPLOYER: VALET PARKING SERVICES INC

Notice: This decision is made on your claim for benefits:

You voluntarily left your job to leave the area for personal reasons.

You did not establish good cause for leaving by showing that staying in this job would cause sufficient hardship to make it necessary for you to quit before finding another job or that you had no reasonable alternative to quitting.

Benefits cannot be allowed under the equity and good conscience provision because you have not shown that your reasons for leaving were sufficiently mitigating and/or you have not demonstrated a continuing attachment to the labor force.

Benefits are denied under Section 35A-4-405(1) of the Utah Employment Security Act beginning July 6, 2008 and ending when you have earned wages in bona fide covered employment equal to at least six times your weekly benefit amount and you are otherwise eligible. To reopen your claim, you can file online at jobs.utah.gov or you can call the Claim Center. This reopening will be effective as of the week you reopen your claim. You will be notified separately of any other issues on your claim.

RIGHT TO APPEAL: If you believe this decision is incorrect, appeal by mail to: Utah Department of Workforce Services, Appeals Section, PO Box 45244, Salt Lake City, UT 84145-0244, or Fax (801) 526-9242, or online at www.jobs.utah.gov. Your appeal must be in writing and must be received or postmarked on or before September 15, 2008. An appeal received or postmarked after September 15, 2008 may be considered if good cause for the late filing can be established. Your appeal must be signed by you or your legal representative. **MAKE SURE YOUR NAME IS WRITTEN LEGIBLY AND THAT YOU INCLUDE YOUR SOCIAL SECURITY NUMBER AND CURRENT ADDRESS.** Also, please state the reason for your appeal. A copy of your appeal will be sent to any other interested parties. It is very important for you to continue to file your weekly claims while the appeal process is pending. You will not be paid for any weeks not filed timely unless you can show good cause for late filing.

UTAH CLAIMS CENTER PHONE NUMBERS: S.L.: 526-4400, Ogden: 612-0877, Provo: 375-4067, Out of Area: (888) 848-0688.

REPR. J Fruin

EMP.#: 5863

DO NOT WRITE BELOW THIS LINE



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Exhibit 1

DWS-UI
Form 617
Rev 8/02

UTAH DEPARTMENT OF WORKFORCE SERVICES
APPEAL FROM DECISION OF REPRESENTATIVE
PO BOX 45244
SALT LAKE CITY, UTAH 84145-0244



Date Received: 10/23/2008

Confirmation No. 0025657

Claimant's Name: Steven Ellis

Claimant SSN: 531-08-4793

Address 1: 3529 e broadwayway apt 9

Address 2:

APPEALS ADJUDICATION

City: Long Beach

State: CA Zip: 90803

Phone: (435)840-0350

OCT 27 2008

Interpreter Language:

U.D.W.S.

Steven Ellis of Long Beach, CA

The appellant in the above entitled action hereby appeals from the decision of the Representative dated: 10/23/2008 and alleges that the said decision is in error on the following grounds:

This is an attempt to appeal the statement sent to me for \$3,019.00. I know that this appeal is late, but the first letter sent to me said that I only owed \$124. I thought it would be easier to just pay that amount, rather than fight the claim. Now, I am receiving an additional letter stating I also owe 3,019.00 due to fraud, weeks after the mailing date. I am not only concerned with the large amount I owe, but I am also concerned that the state of Utah Unemployment thinks I fraudulently collected money. Please, read and accept my appeal.

I was Laid-off from ARUP Laboratories in March 2008. I then filed for Unemployment. While collecting I found a part-time position with VPS (a valet company). On our schedule, we had a start time for the shift but not an end time. Thats because we might get off early. This could have been 3 to 5 hours early. When I filed my weekly claim, I filed to the best of my knowledge, whether I filed wages over the correct amount or less, this was the amount I thought was correct.

After realizing I wanted to go back to school, I decided to move to California for photography. As soon as I relocated in August, I stopped filing. When I put in my notice at VPS, they said my position would be open whenever I returned to Utah. I didn't have a job, so since I was still unemployed, I thought I was eligible to still file.

When I informed my unemployment rep of my leaving VPS and move to California, they started asking questions. I felt every time I was explaining my story and situation they would twist my words around. I would get passed off from one person to the next, and would have to explain my case over and over again. I felt each time I spoke with someone new, my case on paper had changed once again. I didn't understand how my getting laid off in March, resulted into me trying to take money from Utah Unemployment. So, in order to make this all go away I was going to suck it up and pay the \$124. But now that the word FRAUD and \$3,019.00 has entered the picture, I want to make sure everything gets cleared up.

I am good guy, who comes from a good family and would never try to fraudulently take money. If I made a mistake somewhere, and need to pay a fine of \$124, I can handle that. But I want to make sure that my name is clear and I don't have to pay \$3,019.00. I don't know what error was made for a penalty that serious. I am still trying to find a school and I am still trying to find regular work. I truly don't have the money to pay this large fine. Please, honor my appeal.

Thank you for your time.

Steven Ellis

Form: 601-I
Created Dt: 04/03/2008

Claim for Unemployment Benefits

SSN: 531-08-4793
ELLIS, STEVEN C

Claim Information			
SSN	531-08-4793	Original Zip	84108
Name	ELLIS, STEVEN C	Filing Method	T - IVR
Other Name		Claim Effective Date	03/30/2008
Address line 1	2423 KENSINGTON AVE	Backdate Reason	None
Address line 2		Work Srch Code	2 Contacts per week
City/ST/Zip	SALT LAKE CITY UT 841082415	Work Srch End Date	03/28/2009
Phone Nbr	(435) 840-0350	SSN Verified	Y
Alt Phone		Alien Verified	
E-mail Address		ONET	Customer Service
Birth Date	09/05/82 Original: 09/05/82	Claim Taken By	Matt J Reed
Interstate	No	Language	
Res State Code	49 - UT	Straight Utah Claim	
Commuter	No	Reverse CWC	No
Bank Acct Chged		Spanish Clmt Guide	No
Drivers License	163150459 Ver: Y		
Did the claimant certify that they answered the IVR questions truthfully and correctly? Yes			

Residential Information	
Are you making this phone call from Utah?	-
Do you regularly travel to Utah for work?	-
Have you worked in two or more states?	-
Are you currently looking for work in Utah?	-
During the last 18 months has all employment been in Utah?	Y
Have you been in the military?	-

Statistical Information	
Are you disabled?	N
Ethnic	Non-Hispanic
Race	White (Including origins from Europe, Middle
Years of Education	14

Form: 601-I
Created Dt: 04/03/2008

Claim for Unemployment Benefits

SSN: 531-08-4793
ELLIS, STEVEN C

Non-Conditional Information	
Are you a US Citizen?	Y
Have you been legally authorized to work in this country during the past two years?	-
Alien Registration Number	
Gender	M
Would you like 10% federal taxes withheld from your UI check?	Y
Would you like 5% state taxes withheld from your UI check?	Y
Have you filed a formal complaint with any former employer requesting reinstatement on your job or back wages?	N

Eligibility Information	
Have you:	
Applied for or receiving retirement or disability?	N
Applied for or receiving Social Security benefits?	N
Received worker's comp during the past 3 years?	N
Received or entitled to receive vac/sev pay?	N
Attended school/training or to start within two weeks?	N
Applied for benefits from railroad or other state?	N
Are you self employed, operate a farm, officer of corp?	N
Have you worked any day this week?	N
Have you worked 40 or more hours this week?	-
Are you able and available for full-time work?	Y
Does any condition prevent you from accepting FT work?	N
Do you obtain work through a union hiring hall?	N
Union Number:	0
Do you have a recall date within 10 weeks?	N
Will you be working at least 40 hours?	-
Number of weeks until you return to full time work:	0
Are you out of work for seasonal cond or lack of tourism?	N
Did you normally work 40 hrs a wk on a seasonal basis?	-
Have you refused any job offers or temporary work?	N

Employment History (default order is by "End Date")
--

Employer 1			
Employer ID	1184300	Begin Date	09/01/2006
Employer Name	ARUP	End Date	03/24/2008
DBA Name	ARUP	Sep Reason	DC
Address line 1	ATTN PAYROLL		
Address line 2	500 CHIPETA WAY	Phone Nbr	(801) 583-2787
City/ST/Zip	SALT LAKE CTY UT 841081221		

Form: 601-I

Created Dt: 04/03/2008

Claim for Unemployment Benefits

SSN: 531-08-4793

ELLIS, STEVEN C

Employment History (default order is by "End Date")

Employer 2

Employer ID	7105330	Begin Date	
Employer Name	B LINE DELIVERY SERVICES INC	End Date	
DBA Name	B LINE DELIVERY SERVICES INC	Sep Reason	
Address line 1	PO BOX 22874		
Address line 2		Phone Nbr	(801) 560-6224
City/ST/Zip	SALT LAKE CTY UT 841220874		

Employer 3

Employer ID	3449190	Begin Date	
Employer Name	PROGREXION LLC	End Date	
DBA Name	PROGREXION LLC	Sep Reason	
Address line 1	330 CUTLER DR		
Address line 2		Phone Nbr	(801) 677-0100
City/ST/Zip	NORTH SALT LAKE UT 84054		

Instructions

Your claim is effective 03/30/08.

Su reclamo es efectivo 03/30/08.

You will be mailed a form requiring you to choose a payment method of direct deposit or a debit card. A debit card will be mailed to you. All benefit payments will be deposited into the debit card until direct deposit is authorized. Benefits will be denied if the form is not returned within ten business days.

Recibirá un formulario en el correo requiriendo que usted elija un método de pago de depósito directo o tarjeta de débito. Una tarjeta de débito será enviada a usted. Todos los pagos serán depositados en la tarjeta de débito, hasta que el depósito directo sea autorizado. El no cumplir con este requisito dentro de diez días hábiles resultará en que se le nieguen los beneficios.

The first week you meet all of the eligibility requirements is a waiting week. By law, you are not paid for this week. However, you must file your weekly claim to receive waiting week credit.

La primera semana en la que cumpla con todos los requisitos para que su reclamo sea aprobado, es la semana de espera. Por ley, no se le paga por esta semana. Sin embargo, tiene que registrar su reclamo semanal para recibir el crédito de semana de espera.

You are required to file weekly claims in order to receive unemployment benefits. The preferred filing method is by Internet at jobs.utah.gov. You can also file by calling the same number you called today. We recommend that you file on Sunday. The system is available 7 days a week, 24 hours a day. Keep the PIN number you established today confidential. If you work while claiming benefits, you must report all gross earnings for the week in which the work is performed, regardless of when you are paid.

Debe hacer su reclamo semanalmente para recibir sus beneficios de desempleo. El método preferible para registrar su reclamo semanal es por medio del Internet al sitio web: jobs.utah.gov. Si prefiere registrar por teléfono, llame el mismo número que llamó hoy. Recomendamos que usted llame cada domingo. El sistema está disponible 7 días a la semana, 24 horas al día. No comparta su número de clave o pin con nadie. Si trabaja mientras está recibiendo beneficios, debe declarar cualquier empleo o ganancia en la misma semana en la que haya trabajado, sin importar cuando se le pague.

Form: 601-I

Claim for Unemployment Benefits

SSN: 531-08-4793

Created Dt: 04/03/2008

ELLIS, STEVEN C

Instructions

You must be able and available for and actively seeking full time work by making at least 2 new job contacts each week. You must keep a written record of your job contacts. You are required to register for work or show good cause for failing to register within five business days, or benefits will be denied. You must complete the registration at the skills matching level or higher. The preferred method is by Internet at jobs.utah.gov. You may also register with your nearest employment center at Metro SLC 720 S 200 E 801 536-7000.

Usted debe ser capaz y disponible para trabajar y estar buscando empleo de tiempo completo activamente por contactar un mínimo de dos compañías nuevas cada semana. Debe mantener una lista de estos contactos. Se le requiere registrarse para trabajar o demostrar causa buena por no registrarse dentro de cinco días hábiles o se le negarán los beneficios. Debe completar su inscripción hasta el nivel de "Skills Matching" o más. El método preferible es por medio del Internet al sitio web: jobs.utah.gov. o puede registrarse al Centro De Empleo más cerca de usted. Metro SLC 720 S 200 E 801 536-7000.

You have a denial(s) that is still in effect. You will not be paid until the time frame for this denial has passed.

Tiene una negación activa en su reclamo. No será pagado hasta que el período de la negación ha pasado.

You have issues that may affect your eligibility for benefits. You should receive a decision letter or payment within four weeks. Make sure to file your weekly claim while awaiting a decision, or you may not be paid for those weeks.

Su reclamo tiene problemas que pueden afectar su elegibilidad de beneficios. Recibirá una carta de decisión o pago dentro de cuatro semanas. Debe hacer su reclamo semanal mientras que está esperando una decisión o es posible que no será pagado por esas semanas.

You will receive a claimant guide within a week. You will be held responsible for knowing the information in this guide. If you have any questions, call the Claims Center.

Recibirá una guía de desempleo dentro de una semana. Será responsable de entender la información en la guía. Si tiene alguna pregunta, llame el número del Centro de Reclamos.

UTAH DEPARTMENT OF WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
DECISION OF ELIGIBILITY FOR
UNEMPLOYMENT INSURANCE BENEFITS



DATE MAILED: 8/29/08

SSN: XXX-XX-X793

STEVEN C ELLIS
1917 HUNTINGTON ST # 1
HUNTINGTON BEACH CA 92648-3135

FRWE

After a thorough review of the available information presented to the Department, it is concluded that you were working and had earnings while receiving unemployment insurance benefits and knowingly misreported or failed to report these earnings.

You will receive a separate notice indicating any overpayments and penalties associated with this disqualification.

You are disqualified from receiving unemployment benefits or waiting week credit for 43 weeks effective August 31, 2008 through June 27, 2009 and until the overpayment and penalty amounts are repaid in full as provided under Section 35A-4-405(5) of the Act. (See reverse) The disqualification time period is determined by the number of weeks in which the misrepresentation(s) or omission(s) occurred.

RIGHT TO APPEAL: If you believe this decision is incorrect, appeal by mail to: Utah Department of Workforce Services, Appeals Section, PO Box 45244, Salt Lake City, UT 84145-0244, or Fax (801) 526-9242, or online at www.jobs.utah.gov. Your appeal must be in writing and must be received or postmarked on or before September 15, 2008. An appeal received or postmarked after September 15, 2008 may be considered if good cause for the late filing can be established. Your appeal must be signed by you or your legal representative. **MAKE SURE YOUR NAME IS WRITTEN LEGIBLY AND THAT YOU INCLUDE YOUR SOCIAL SECURITY NUMBER AND CURRENT ADDRESS.** Also, please state the reason for your appeal. A copy of your appeal will be sent to any other interested parties. It is very important for you to continue to file your weekly claims while the appeal process is pending. You will not be paid for any weeks not filed timely unless you can show good cause for late filing. See attached information for a more detailed explanation of the law provisions.

UTAH CLAIMS CENTER PHONE NUMBERS: S.L.: 526-4400, Ogden: 612-0877, Provo: 375-4067, Out of Area: (888) 848-0688.

REPR. J Fruin

EMP.#: 5863

DO NOT WRITE BELOW THIS LINE



5047729

Exhibit 1

013

1
2 JUDGE But you were aware of the issue for the quit?
3
4 CLAIMANT I was aware of this issue yes.
5
6 JUDGE And you elected not to file an appeal or why didn't you file it?
7
8 CLAIMANT Well I was originally just going to pay the 124 or whatever that amount was and
9 then I received an additional letter stating that there was fraud and that I owed um
10 three thousand.
11
12 JUDGE Okay. And so that's what made you file your appeal?
13
14 CLAIMANT Yes.
15
16 JUDGE Anything else you want to tell me about the untimely appeal?
17
18 CLAIMANT Um no that was pretty much it.
19
20 JUDGE Okay so just so I can restate you got the letter you got both decision letters is that
21 correct you got the fraud decision letter and you got the-the letter on the um on the
22 separation.
23
24 CLAIMANT Yes.
25
26 JUDGE And you uh at first had decided not to appeal it because you thought that it was one
27 sum of money and then you discovered it was actually it was a different sum of
28 money and so when you discovered that it was a different sum of money at that
29 point you decided to file the appeal?
30
31 CLAIMANT Yes and I was also informed that the 124 was the only amount that I would have had
32 to pay back and then that's when I received the second letter.
33
34 JUDGE Um I am seeing one letter that was sent to you on the 15th um and it has 124 on
35 there in the same letter there is the information on 1,548 dollars that you would owe
36 that's in that same letter for the 124. So did you not read the letter completely?
37
38 CLAIMANT I did. I wasn't aware that it was going to come out to a total of three thousand
39 though.
40
41 JUDGE Okay it tells you right there uh on your fraud decision letter and-and we will it says
42 you've been paid the unemployment benefits in the amount of 124 to which you
43 were not entitled and it tells you-you have to pay it back. You have a request an
44 installment agreement paragraph and then the third paragraph says you are
45 considered to have knowingly withheld material information or failed to report

1 information in order to receive unemployment benefits to which you are not entitled.
2 This has created an overpayment of 1548 dollars and a penalty of 1548 dollars that
3 must be paid before you are eligible for any future benefits or waiting week credits.
4 So its telling you right there you have an overpayment of 1500 dollars and a penalty
5 of 1500 dollars which adds up to three thousand dollars so how if you read that
6 letter would you not be aware of the 3000 dollar overpayment?

7
8 CLAIMANT I'm sorry which page are you reading this from?

9
10 JUDGE Okay its-its you know you got two packets?

11
12 CLAIMANT Yes.

13
14 JUDGE Okay one packet was dealing with the fraud and one packet is dealing with the quit.
15 I'm going through the packet dealing with the fraud because we are talking about the
16 un-timeliness and that's covering both issues. Okay and its Exhibit #2 and it's the
17 third paragraph on there.

18
19 CLAIMANT Okay I do see that now.

20
21 JUDGE Okay so how would you not be aware of a three thousand dollar overpayment after
22 reading that that letter? Did you not read it carefully or did-

23
24 CLAIMANT I must not have read through it including them but-

25
26 JUDGE Okay.

27
28 CLAIMANT When I spoke to I believe it was Dana Day-na Simper I think it was um she
29 informed me that the 124 was most likely only going to be issued.

30
31 JUDGE Okay but then you got a decision letter that told you it was not.

32
33 CLAIMANT Yes and that's when I wrote the appeal.

34
35 JUDGE No you didn't write the appeal then you wrote the appeal in October.

36
37 CLAIMANT There must have been a second letter I received.

38
39 JUDGE Well but in this first letter that you received it tells you about the three thousand
40 dollar overpayment then too. So it's not like you were not notified in the first letter.

41
42 CLAIMANT Okay.

43
44 JUDGE I'm just trying to understand that you when you talked to Ms. Simper then you felt
45 that 124 was the only thing?

1
2 CLAIMANT Yeah I was under the impression that that would be the only thing.
3
4 JUDGE Okay. Do you have anything else you want to tell me about the untimely appeal?
5
6 CLAIMANT No.
7
8 JUDGE Okay um, Mr. Ramirez, do you have any questions for Mr. Ellis on the untimely
9 appeal?
10
11 RAMIREZ I do not.
12
13 JUDGE Ms. Kramer, any questions for Mr. Ellis on the untimely appeal?
14
15 RAMIREZ I do not.
16
17 JUDGE Okay. Uh, Mr. Ramirez do you have any testimony to give on that issue?
18
19 RAMIREZ On the untimely appeal?
20
21 JUDGE Yeah.
22
23 RAMIREZ No.
24
25 JUDGE Okay how about you, Ms. Kramer?
26
27 KRAMER No I do not.
28
29 JUDGE Okay. I'm going to close that part of the hearing then and we're going to go into the
30 separation issue. Uh, Mr. Ellis, did you work for Valet Parking Services Inc.?
31
32 CLAIMANT Yes.
33
34 JUDGE Do you know what your dates of employment were with them?
35
36 CLAIMANT Um not the exact date it was either the end of March or sometime in the beginning
37 of April.
38
39 JUDGE Of 2008?
40
41 CLAIMANT Yes.
42
43 JUDGE When was your last day?
44
45 CLAIMANT Um it was either July 12th or July 11th.

1
2 JUDGE How long of a notice?
3
4 CLAIMANT Two weeks.
5
6 JUDGE Did you work out your notice?
7
8 CLAIMANT Yes.
9
10 JUDGE Why did you quit?
11
12 CLAIMANT I quit to uh move to California to check out the photography school.
13
14 JUDGE Did you have another job lined up when you quit?
15
16 CLAIMANT Yes I did.
17
18 JUDGE Where?
19
20 CLAIMANT It was Lodestone Adventures.
21
22 JUDGE And when were you going to start that?
23
24 CLAIMANT Well I went through training while I was still working with the VCS valet parking
25 and while after I went through my training with them I thought I was going to be
26 working more than it was actually turned out to be.
27
28 JUDGE How much did you think you were going to be working?
29
30 CLAIMANT I thought I would be working at least once a week uh-
31
32 JUDGE What-
33
34 CLAIMANT But-
35
36 JUDGE What kind of company is Lodestone Adventures?
37
38 CLAIMANT They are a challenge course or a high ropes course. We would have groups come up
39 to us and we would kind of teach them the importance of teamwork and working as
40 a team.
41
42 JUDGE Okay and so what you would be doing for them was what?
43
44 CLAIMANT I was a facilitator.
45